IN THE HIGH COURT OF JUDICATURE AT BOMBAY

WRIT PETITION NO. 1247 OF 2003

Date of Judgment : 5th October, 2005

For Approval and Signature :

The Honourable Mr. Justice S.K. Shah :

1. Whether Reporters of Local Papers may be allowed to see the Judgment?

2. To be referred to the Reporters or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges ?

6. Whether the case involves an important question of law and whether a copyof the Judgment should be sent to Nagpur, Goa and Aurangabad office?

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1247 OF 2003

1. TARAMATI RASIKLAL KUNDAL
THROUGH HER CONSTITUTED
ATTORNEY LAIQ AHMED SHAIKH

2. SHRI LAIQ AHMED SHAIKH
PARTNER OF ASIAN BUILDERS
BOTH HAVING OFFICE AT
BIQUEES APARTMENT,MAHAKALI
CAVAS ROAD, ANDHERI(E),
MUMBAI 400 093 ... PETITIONERS.

VERSUS.

1. THE STATE OF MAHARASHTRA
HAVING ITS OFFICE AT
REVENUE AND FOREST
DEPARTMENT,
MANTRALAYA, MUMBAI.

2. SECRETARY AND OFFICER ON
SPECIAL DUTY (APPEALS),
REVENUE & FOREST DEPARTMENT
STATE OF MAHARASHTRA,
HAVING HIS OFFICE AT
INDUSTRIAL BUILDING, 1ST
FLOOR, CHURCHGATE, MUMBAI.

3. JAMNADAS MURLIDHAR JAISING
THROUGH LR.
3(a) MISS.MAYA JAMNADAS JAISINGH
RESIDING AT C/O.JAISINGH
PLASTIC INDUSTRY, 47,
CHAKALA, ANDHERI (EAST),
MUMBAI -99. ... RESPONDENTS.

CORAM : S.K.SHAH, J.
DATE : October 5, 2005.

JUDGMENT

1. The Petitioner challenges the Order passed by the Secretary and Officer on Special Duty (Operation), Revenue and Forest Department, rejecting the Revision and confirming the Order, dated 16.7.2001 of the Additional Commissioner, Konkan Division.

2. Brief facts giving rise to this Petition are as under :-

. Before the City Survey was introduced for the City of Bombay, the land bearing Survey Nos. 47A/7, 47A/1 and 47A/10 belonging to different persons, namely, land at Survey No. 47A/7 belong to the Petitioners, S.No. 47A/1 belong to Respondent NO.1 and S.No. 47A/10 belong to one Fransis Almeda. The owners of these pieces of lands were separate, however, while introducing the City Survey in the City of Bombay, these three pieces of land were wrongly amalgamated for which, one CTS Number, being CTS No. 453 was given. The Petitioner No.1 alongwith her father late N.J.Bhole had purchased the land of S.No. 47A/7 of village Chakala, Andheri (E), Bombay on 21.11.1964. The

Petitioners had filed an Appeal before the Superintendent of Land Records in 1958 challenging the wrong amalgamation and praying for separation of the three pieces of the land belonged to three different owners. However, Superintendent of Land Record held that the use of the land was for agricultural purposes. He had no jurisdiction and he directed the Petitioner to approach the Collector. Accordingly, the Petitioners approached the Collector and the Collector by his Order, dated 19.1.1980 and 28.9.1999 directed the Separation of the Land of Survey No. 47A/7 belonging to the Petitioner by subdivision of CTS No. 453 and the same was directed to be done by the City Survey Officer after giving notice to the concerned Parties.

3 . Thereupon the City Survey Officer gave notice to the Petitioner and the Respondent NO.2 of his intention to subdivide the CTS No. 453 and separating three lands of original three survey numbers. the notice, was issued on 17.3.1997. The City Survey Officer carried out the measurements for separating the land at S. No. 47A/7 on the basis of the Petitioners possession. However, the Respondent NO. 3 filed complaint to the City Survey Officer. Thereon, the City Survey Officer called upon the Respondent NO.3 to produce the documents of ownership in respect of S.No. 47A/7. But he did not

produce the same. Therefore, the City Survey Officer, by letter dated 31.5.1997, Rejected the Appeal of the Respondent No. 3. The Respondent No. 3, therefore filed an appeal before the Collector. The Collector heard the Appeal and passed Order dated 28.9.1999, clarifying that the Order dated 19.1.1980 imposing penalty did not enable the City Survey Officer to enter of Respondent NO.3 in Property Card and only land bearing S.No. 47A/10 was put to unauthorised N.A. use and not S.No. 47A/7 belonging to the Petitioner. Therefore, the entry made on the basis of that Order, dated 19.1.1980, was wrong and required to be reviewed. The Respondent No.3, therefore filed an Appeal before the Additional Commissioner, challenging Order, dated 28.9.1999, passed by the Collector as also the Order Passed by the Collector on 19.1.1997 whereby the Collector had directed the separation of the three pieces of land.

4 . The Additional Commissioner Konkan Division, by his Order dated 16.7.2001, held that it was incorrect to give one City Survey Number No. 453 to three lands belonging to three different owners. He also further observed that recording name of Jamnadas Jaising in property Card of CTS No. 453 is incorrect and requires to be corrected. He also observed that the conclusion

drawn by the Superintendent of Land Records was correct and, therefore, it was necessary to separate the Petitioners' land being Survey No. 47A/7. However the Additional Commissioner held that the land bearing S.No. 47A/7 is non-agricultural land and, therefore, Collector had no jurisdiction and, therefore, he set aside the Order of Collector. He also observed that there was dispute in respect of the ownership of Survey No. 47A/7, which was included in CTS No. 453. Therefore, the Additional Commissioner observed that the Revenue Department cannot adjudicate the ownership rights and the Orders from the Competent Civil Court was required to be obtained. He therefore observed that accordingly the separation of the three lands from CTS No. 543 was possible only after this dispute of ownership is decided by the Competent Civil Court and, thus, allowed the Appeal and set aside the Order passed by the Collector on 9.1.1997 as also the Order dated 28.9.1999.

5 . The Petitioners thereupon preferred a Revision Against the Order of the Commissioner to the State Government but in Revision, the impugned Order came to be passed, hereby the Order of the Additional Commissioner was confirmed and the Revision was dismissed. Hence, the present Writ Petition.

6 . The learned Counsel for the Petitioner submits that the observations of the Additional Commissioner that there was dispute with regard to ownership of the land of S.No. 47A/7, which belongs to the Petitioner, was totally wrong. In fact, there was no such dispute at all. He has pointed out the letters dated 12th July, 1972 written by J.N.Jaising - Respondent No.3 to the said City Survey Officer, mentioning that he was owner of w S.No.47A/10 and 17A/11 of village Chakala and that letter specifically mentions that S.No.47A/7 did not belong to him and the said land belongs to Shri N.J.Bhole. The learned Counsel for the Petitioner also pointed out Exhibit V-1, which the statement of J.N.Jaisingh, dated 24.5.1988 confirming that the land of S.No.47A/7 was of the ownership of one Mr. Shaikh, who is the power of attorney holder of the Petitioner. From these letters it is clear that the Respondent NO. 3 never disputed the ownership of the Petitioner over the land of S.No.47A/7. In view of these observations made by the Additional Commissioner, in the Order that there was dispute with regard to the land of S.No. 47A/7 and, therefore, setting aside of the Order of Collector for separation was obviously incorrect. As such, the Order of Review Confirming Order of Collector was also illegal and incorrect. Those orders, therefore, shall have to be set aside. Hence, the Writ

Petition deserves to be allowed. Hence, the Order:-

ORDER

1. The Impugned Order passed by the 2nd Respondent-the Secretary and Officer on Special Duty, dated 12.3.2003 passed in Revision as well as the Order passed by the the Additional Commissioner, 16.7.2001 passed in Appeal, are hereby quashed and set aside and the Orders passed by the Collector, dated 9.1.1997 and dated 28.9.1999 are restored. The same shall be implemented.

2. The Writ Petition is made absolute in the above terms.

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[S.K.SHAH, J.]